



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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October 5, 2012

Mr. Patrick P. Martin
Terre Haute Board of Sanitary Commissioners
Department of Engineering
17 Harding Avenue, Room 200
Terre Haute, Indiana 47807

Re: Comfort Letter
Sugar Creek Scrap-Combined Sewer
Overflow Acquisition Area
1901 & 2003 Prairieton Road
Terre Haute, Vigo County
Brownfield Site #4120701

Dear Mr. Martin:

In response to the request by the Terre Haute Board of Sanitary Commissioners (Prospective Purchaser) to the Indiana Brownfields Program (Program) for assistance concerning the Sugar Creek Scrap - Combined Sewer Overflow (CSO) Acquisition Area in Terre Haute, Vigo County (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to address applicable limitations on liability for environmental conditions on the Site. Though not a legal release from liability, this letter provides specific information with respect to some of the criteria the Prospective Purchaser must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.* and Indiana Code (IC) § 13-25-4-8(b) (incorporating 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1 (applying 42 U.S.C. § 9607(r) to petroleum contamination). This letter will also help to establish whether environmental conditions at the Site might be a barrier to redevelopment or transfer.

The Site consists of 32.93 acres and is identified as Sugar Creek Scrap- CSO Acquisition Area. The Site consists of two parcels currently owned by Sugar Creek Scrap, Inc. (Sugar Creek) identified by the Vigo County Assessor's Office as parcels # 84-06-33-101-001.000-002 (28.16 acres) and 84-06-32-200-002.000-002 (4.77 acres). According to the Prospective Purchaser, the Site will be part of future wastewater system projects related to the City's planned combined sewer overflow improvement.

The Site is located on the eastern bank of the Wabash River south of downtown Terre Haute, and the majority of the parcel is tree and grass covered. The Site parcels are separated from Prairieton Road to the east by other parcels on which an auto salvage company (Southwest Auto Salvage) and scrap metal facility (Sugar Creek Scrap) are located. The scrap metal company has operated for over 40 years east of the Site. A small undeveloped parcel followed by International Paper Company, which has been in operation for over 75 years, is located to the south, and the Wabash River is to the west of the Site. Undeveloped land is present north of the Site while a wastewater treatment plant is present northeast of the Site. Further northeast is a chemical processing business, which has been in operation for at least 40 years. Historical surrounding property usage has included undeveloped land, agricultural land, a brick yard, a distillery, a paper company, a freight station, a filling station, and an automobile repair shop.

The property has been mostly unoccupied for close to 100 years. Portions of the property are currently used to store scrap automobiles, and inventory from the scrap yard to the east encroaches onto the Site's eastern boundary. The Site contains several sediment ponds and low lands commonly inundated when the Wabash River floods. The Site has two low lying areas with levees built around each area, and the northern low lying area contained water on the day of the Site visit in April 2012. Storm water sewer lines are also present at the Site, which were installed in the mid 1960s and are owned and maintained by the City of Terre Haute. Parts of the Site have historically been used to store scrap automobiles and trash, including: tires, metal, coal ash and cinders, drums, metal, and foundry sand. Dumping and landfill activities are suspected to have historically occurred at the Site. A small structure is present along the bank of the Wabash River, however, it has been reported that it is collapsing into the river. According to the Terre Haute Historical Society, this structure may be associated with the former brick manufacturing business that was located in the vicinity of the Site in the early 1900s.

As part of this request, the Prospective Purchaser provided the Program with a *Phase I Environmental Site Assessment Update* (Phase I Update) dated June 20, 2012 prepared by Bruce Carter Associates, LLC (BCA). The Phase I Update to the January 24, 2011 *Phase I Environmental Site Assessment* (Phase I) was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-05, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" rule set forth in 40 CFR Part 312. The Prospective Purchaser provided answers to the user-specific questions to ensure its satisfaction of the federal "All Appropriate Inquiries" rule set forth in 40 CFR Part 312.

Recognized Environmental Conditions

The conclusion of the Phase I stated the following on-Site recognized environmental conditions (RECs):

1. The Site contains automobiles and related inventory such as scrap pipe, tires, and empty metal drums. In addition, an abandoned above ground storage tank (AST), likely from the adjoining salvage yard, is present at the Site. Portions of the property

are also still being used by the salvage yard for storage of some inventory and scrap materials. A violation letter, dated October 29, 2009, was issued by IDEM Office of Land Quality, Industrial Waste Compliance Section, to Sugar Creek for the following violations: unreported spills and releases, lack of storm water pollution prevention, potential refrigerant releases to the atmosphere, record keeping of mercury switches, and other housekeeping related practices.

2. Coal, ash, and cinders, suspected foundry sand, and slag were visible along the edges of the gravel drive and filled areas located at the Site. This material can contain levels of some metals and polynuclear aromatic hydrocarbons (PAHs) that may pose a risk to human health and the environment. An IDEM Notice of Violation Letter, dated April 13, 1998 and an Agreed Order, dated April 20, 2000 was issued to Sugar Creek. Both documents indicate that Sugar Creek accepted scrap metal from Gartland Foundry, a generator of hazardous, special, and solid wastes that included foundry sands and induction furnace baghouse dust. These waste streams are hazardous under Resource Conservation Recovery Act (RCRA). These wastes were transported and disposed at the property, which may include the Site.
3. Title records from 1990 made reference to a dump on the property. Water leaching through the trash disposed in a landfill can pose a risk to soil and groundwater in the area of the waste.
4. A 2007 Environmental Disclosure Document indicated that the Site was a location of petroleum storage, handling, or processing. No other record of this activity has been found, however this may be in reference to the scrap activity on the adjoining salvage yard that encroaches on the Site.
5. Commercial Solvents Corporation is located southeast of the Site and may be upgradient and adjoining the southern portion of the Site. Documents indicate that ethanol is distilled at the Site; however, it is unknown if other solvents were also manufactured at the adjoining property and if it has contaminated the Site.

Although not identified as RECs, other potential environmental concerns were noted in the Phase I ESA.

- International Paper Mill is located south of the Site and is listed as a Conditionally Exempt Small Quantity Generator of hazardous waste. One record of enforcement action was found, dated January 3, 1990 and was documented as an informal, written action. In addition, two violations were noted and both were resolved. Two leaking underground storage tank (LUST) incident numbers have been assigned to the property, however both are listed as no further action (NFA). This is considered a *de minimis* condition.

- The remains of a structure were found on the banks of the Wabash River. Brick manufacturing has historically been conducted in the vicinity of the Site and this structure was likely used as a part of this business. The use of the building is unknown. This is considered a *de minimis* condition.
- Wabash Environmental Technology is northeast of the property and has been identified as a Resource Conservation Recovery Act (RCRA) Corrective Action Site and a Federal Comprehensive Environmental Response, Compensation, Liability, Information System (CERCLIS) Site, but it is not included on the National Priority List (NPL). Several enforcement actions were reported on the Site in the 1970s and 1980s. IDEM issued a cease and desist order to the facility in 2004. Emergency cleanup action was taken on the property directed by the Environmental Protection Agency (EPA). The Site is also listed as a RCRA treatment, storage, and disposal (TSD) facility with seven related enforcement actions and eleven violations from 1987 to 1997. This property is in the Voluntary Remediation Program (VRP) and under regulatory oversight and therefore is considered a *de minimis* condition.
- Schering-Plough Animal Health is located on the same property as Wabash Environmental Technology, and is in the VRP. This is considered a *de minimis* condition.

Liability and Enforcement Discretion

IDEM's "Brownfields Program Comfort and Site Status Letters" Nonrule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Prospective Purchaser, that:

- (1) no state or federal enforcement action at the Site is pending;
- (2) no federal grant requires an enforcement action at the Site;
- (3) no condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) neither the Prospective Purchaser nor an agent or employee of the Prospective Purchaser caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site, and;
- (5) the Prospective Purchaser is eligible for an applicable exemption to liability, specifically the BFPP exception to liability for hazardous substance contamination found in CERCLA § 107(r) and IC 13-25-8(b), and for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the applicable statutory criteria are met.

As discussed below, the Prospective Purchaser has demonstrated to IDEM's satisfaction that it is eligible for the BFPP exemption from liability for hazardous substance and petroleum contamination under State law provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

Bona Fide Prospective Purchaser

Under IC § 13-25-4-8(a), which bases liability on Section 107(a) of CERCLA, a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. Under §107 (r) of CERCLA and IC § 13-25-4-8(b), a BFPP is not liable under § 107(a) as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus a prospective purchaser that satisfies CERCLA §§ 101(40) (defining bona fide prospective purchaser) and 107(r) would not be liable under CERCLA §107(a) or IC § 13-25-4-8(a). Similarly, a prospective purchaser that satisfies CERCLA §§ 101(40) and 107(r) would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

The BFPP provisions of CERCLA require a person to meet the criteria of CERCLA §§ 101(40) and 107 (r) to be protected from liability. If the Prospective Purchaser satisfies these criteria, IDEM is prohibited from pursuing the Prospective Purchaser even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, the Prospective Purchaser's satisfaction of CERCLA §§ 101(40) and 107(r) prohibits IDEM from pursuing it for response costs relating to the past release of hazardous substances found at the Site. Therefore, IDEM will not require the Prospective Purchaser to respond to the past release of hazardous substances found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901.

To meet the statutory criteria for liability protection as a BFPP, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Prospective Purchaser will acquire ownership of the Site after January 11, 2002 (and after June 30, 2009), and any disposal of hazardous substances and petroleum at the Site will have occurred prior to it acquiring the Site. See 42 U.S.C. § 9601(40)(A). Based on information reviewed by IDEM, IDEM concludes that the Prospective Purchaser has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Prospective Purchaser has represented that it is not potentially liable or affiliated with any person that is potentially liable for potential contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Prospective Purchaser meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Prospective Purchaser must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or limit

human, environmental, or natural resource exposure to any previously released hazardous substance.” 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Prospective Purchaser must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Prospective Purchaser recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Prospective Purchaser will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Prospective Purchaser must also comply with 42 U.S.C. § 9601(40) (C) regarding notices and 42 U.S.C. § 9601(40) (G) regarding requests for information or administrative subpoenas.

Reasonable Steps

As of the date of issuance of this Comfort Letter, no sampling of soil or groundwater has occurred on the Site itself to confirm the presence or absence of soil and groundwater contamination that may underlie the Site as a result of on-Site and off-Site operations. Therefore, at this time, IDEM has insufficient information to provide a comprehensive technical opinion regarding reasonable steps for this Site. According to the “*Reasonable Steps Questions & Answers*” within the U.S. Environmental Protection Agency’s “*Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (“Common Elements”)*” (May 6, 2003), doing nothing to investigate a suspected environmental hazard would likely be insufficient to meet the reasonable steps requirement for protection as a BFPP (See Appendix B, p.4). Phase II investigation results would enable the Prospective Purchaser to make an informed determination of the reasonable steps necessary to prevent any exposure to hazardous and/or petroleum substances that may be impacting the Site as is required to maintain BFPP status under the applicable statutes. If requested by the Prospective Purchaser, the Program will review a Phase II investigation report if one is completed and, as a follow-up to this letter, provide a technical opinion regarding any additional recommended reasonable steps for the Site.

Based on currently available information, IDEM believes the following to be appropriate reasonable steps for the Prospective Purchaser to undertake with respect to the potential contamination on and/or underlying the Site in order to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort Letter Policy:

- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance or petroleum contamination or any information about new (or previously unidentified) contamination.

- Investigate the RECs identified in the June 2012 Phase I ESA, specifically the southeastern, eastern, and northeastern property boundaries and elsewhere on the Site that are known or suspected to have been filled with industrial waste materials or other dumped materials.
- Manage and dispose of any contaminated soil and/or fill disturbed as a result of future excavation or construction activities on the Site associated with the planned wastewater system project(s) so that remaining contaminant concentrations do not present a threat to human health or the environment in accordance with applicable Federal, State and local laws and regulations. This determination will be made using the IDEM's Remediation Closure Guide (March 22, 2012).

Implementation of the above-enumerated reasonable steps, in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for the BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination that may be found on the Site which could give rise to liability.

Conclusion

IDEM encourages the assessment and redevelopment of the Site. Pursuant to the Comfort Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available through site investigation and/or remediation activities, other measures may be necessary to protect human health and the environment and satisfy the reasonable steps requirements of BFPP status (*e.g.*, recordation of land use restrictions through an environmental restrictive covenant). In particular, if new areas of contamination or new contaminants are identified, the Prospective Purchaser must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order not to jeopardize BFPP status.

This letter shall not be construed as limiting a Prospective Purchaser's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Prospective Purchaser that are required to maintain the status of BFPP or the benefit of the issuance of this letter. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipients and this Site, and shall not be binding on IDEM at any other site.

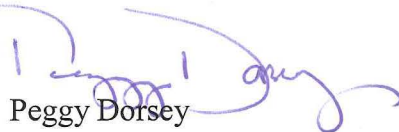
If at any time IDEM discovers that the above-mentioned report, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, then IDEM reserves the right to modify this letter or, if the inaccuracy can be attributed to the

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Prospective Purchaser, revoke this letter, and pursue any responsible parties. Furthermore, if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision is a statement of enforcement priority based on known contaminant levels and does not apply to future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901. In addition, if any acts or omission by the Prospective Purchaser exacerbates the contamination at the Site, or if the Prospective Purchaser does not implement and maintain the reasonable steps outlined in this letter, then the protection provided by the BFPP exemption may not apply. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability.

IDEM is pleased to assist the Terre Haute Board of Sanitary Commissioners with the redevelopment of the Site. Should you have any questions or comments, please contact John Morris at 317/234-8099 or toll free from within Indiana at 800/451-6027, ext. 4-8099. He can also be reached via email at jomorris1@ifa.in.gov.

Sincerely,



Peggy Dorsey
Deputy Assistant Commissioner
Office of Land Quality

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)
John Morris, Indiana Brownfields Program (*electronic copy*)
John Kilmer, Bruce Carter Associates, LLC (*electronic copy*)